

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4211 of 2006()

CRA.595/2005 of ADDL.SESIONS COURT, KOTTAYAM
CC.144/2004 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOTTAYAM
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REVN. PETITIONER: APPELLANT/ACCUSED:

P.G. PRABHAKARAN, S/O.GOVINDAN,
RESIDING AT PADINJAREKARAVATH (H)
CHANNANICKADU P.O., KOTTAYAM.

BY ADV. SRI.TOMY SEBASTIAN

RESPONDENTS: COMPLAINANT& STATE:

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1. P.L. MATHEW, PERUMPALATHUSSERIL (H)
KUMARAKOM POST, KOTTAYAM DISTRICT.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.T.SANKARAN, J

Crl.R.P.No. 4211 of 2006

Dated this the 6th day of December, 2006

ORDER

The petitioner was found guilty for the offence under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for a period of four months and was directed to pay a compensation of Rs.60,000/- to the complainant and in default of payment of compensation to undergo simple imprisonment for one month. The petitioner challenged the conviction and sentence in appeal. The appellate court confirmed the conviction, but modified and reduced the sentence to imprisonment till the rising of the court. The direction to pay compensation was confirmed. However, the default sentence was enhanced to three months.

2. The case of the complainant is that the accused borrowed Rs.60,000/- from him and Ext. P1 cheque was issued in discharge of that debt. On presentation of the cheque, it was dishonoured on the ground of 'insufficiency of funds' in the account of the accused. The accused conceded that Ext.P1 cheque was written on a cheque leaf in respect of the account

maintained by him. The signature in Ext.P1 cheque is also admitted. A suggestion was made to PW1 that a blank signed cheque was issued to the complainant, when the accused received some amount from him. Ext.P4 notice was issued to the accused. He received the notice but he did not send any reply. No defence evidence was also adduced by the accused. The trial court held that the presumption under Section 139 of the Negotiable Instruments Act is available in favour of the complainant and that the accused/petitioner has not rebutted the presumption. The appellate court considered the evidence in detail and concurred with the view taken by the trial court. The appellate court, however, reduced the sentence following the decision in Anilkumar Vs. Shammy (2002 (3) KLT 852).

3. No grounds are made out for interference in revision under Section 397 of the Code of Criminal Procedure and there is no illegality, irregularity or impropriety in the judgments impugned.

4. The learned counsel for the petitioner submitted that a reasonable time may be granted to the petitioner to pay the compensation amount. Taking into account the facts and

circumstances of the case, I am inclined to grant three months' time to the petitioner to pay the compensation amount.

In the result, this Crl.R.P. is dismissed and the conviction and sentence are confirmed. However, three months' time is granted to the petitioner to pay the compensation amount of Rs.60,000/-. Execution of the default sentence shall be kept in abeyance for three months.

**K.T.SANKARAN,
JUDGE**

csl

